Lee Freddie & Ors v Majlis Perbandaran Petaling Jaya & Anor

HIGH COURT (SHAH ALAM) — ORIGINATING MOTION NO 25-22-93
MAHADEV SHANKAR J
25 JULY 1994

Local Government — *Town planning — Building proposal — Apartment blocks in residential area — Whether local authority had duty to inform adjoining landowners and residents — Whether residents had legitimate expectation to be informed — Whether residents could legitimately expect landowner not to build on his land because land left vacant for 20 years — Town and Country Planning Act 1976 s 21(6)*

Administrative Law — *Remedies — Certiorari — Approval given by local authority for building of apartment blocks in residential area — Whether residents have right to object to proposal — Whether local authority acted mala fide and considered irrelevant factors*

Words and Phrases — *'Locus standi'*

Words and Phrases — *'Legitimate expectation'*

In the 1960s, the Malaysia Government Services Welfare and Recreational Council ('the Council'), which was the nominal predecessor of the second defendant, the Federation of Malaya Government Officers Co-operative Housing Society Ltd ('the Co-op'), owned land held under Grant 7133 in what is now known as SS1, Petaling Jaya. The Council put up a brochure for a housing scheme for government officers containing a layout plan for the proposed sub-division of the land into 183 bungalow lots, with Lot 1916 ('the lot') in the centre and designated for two blocks of 11-storey flats with shops. The Council sold the bungalow lots to its members and retained the lot for itself. In 1984, the Co-op submitted a proposal to the first defendant, the Majlis Perbandaran Petaling Jaya ('the MPPJ'), to erect 60 units of apartments comprised in three five-storey buildings on the lot. The MPPJ approved an amended building plan permitting the Co-op to build 48 units. The plaintiffs are owners and residents in three bungalows in the immediate vicinity of the lot who want it to remain vacant as a recreational area. They applied for an injunction and order of certiorari to quash the decision of the MPPJ on the ground that the residents of the adjoining land had not been consulted before the decision was taken, relying on, inter alia, s 21(6) of the Town and Country Planning Act 1976 ('the Act'). The plaintiffs contended that they had a legitimate expectation to be notified of any development and given the right to object to it if it adversely affected their interests.

Held, dismissing the application:

(1) The plaintiffs had a legitimate expectation to be notified and have their objections heard and it was abundantly clear from

judicial precedent that adjoining owners who are adversely affected have a right to apply for certiorari within six weeks from the date of the decision. However, this did not mean that they were entitled to dictate to the MPPJ how it should decide.

(2) A local authority has a duty at common law to notify and hear objections from adjoining landowners in order to be regarded as having acted fairly in making its decision. The practice of notifying adjoining landowners of applications for planning permission set out by s 21(6) of the Act had been followed prior to 1984 and it would be unfair and inconsistent with good administration to depart from it merely because the relevant provisions of the Act were not in force on 1 December 1978. The provisions, especially ss 13(1) and 21, giving affected persons the right to object to local plans and development plans, respectively, were merely declaratory of what good administration practice is.

(3) However, there was no serious damage done in this case because despite the omission to give formal notice, the plaintiffs had known of the plans and their objections were heard. To obtain an order of certiorari, the plaintiffs must prove that the MPPJ had acted mala fide and took into consideration factors which it ought not have done, but the plaintiffs had failed to do this.

(4) There was no legitimate expectation that an adjoining landowner should not be allowed to build on his land merely because he has left it vacant for a number of years. Furthermore, the Co-op's development proposal was in line with the official layout plan approved earlier by the planning authorities. Therefore, the Co-op should not be prevented from building on the lot merely because it chose to leave it vacant for 20 years.

Obiter:

(1) For a legal right to be enforceable, it has to be precisely defined by statute or judicial decision. A mere expectation can only become 'legitimate' when it is recognized by a court of law to be a reasonable expectation, either because the practice is to regard it as usual or customary or because of some special conduct of an individual in a position of authority who was not acting in a manner inconsistent with his authority.

(2) Locus standi is literally a place of standing, ie a place to stand in court or a right to appear in a court of justice on a given question. That right is given to a person if he is suing to enforce some private right or even some public right provided the interference with that public right causes direct damage to him. One has to determine first whether the right or legitimate expectation arises before the issue of locus standi can arise.

[Bahasa Malaysia summary

Di dalam tahun 1960an, Malaysia Government Services Welfare and Recreational Council ('Majlis itu'), yang merupakan pendulu nominal

defendan kedua, Sykt Kerjasama Perumahan Pegawai-Pegawai Kerajaan Malaysia Bhd ('Sykt Kerjasama itu'), mempunyai tanah yang dipegang di bawah Geran 7133 di kawasan yang sekarang dikenali sebagai SS1, Petaling Jaya. Majlis itu telah mengeluarkan suatu risalah skim perumahan pegawai kerajaan yang mengandungi suatu pelan susun atur yang mencadangkan pemecahan lot tanah itu kepada 183 lot rumah banglo, dengan Lot 1916 ('lot tersebut') terletak di tengah-tengah dan ditandakan untuk pembinaan dua blok rumah pangsa 11 tingkat dengan kedai. Majlis itu telah menjual lot banglo itu kepada ahli-ahlinya dan menyimpan lot tersebut untuk dirinya sendiri. Pada tahun 1984, Sykt Kerjasama itu telah menyerahkan suatu cadangan kepada defendan pertama, Majlis Perbandaran Petaling Jaya ('MPPJ'), untuk membina 60 unit pangsapuri yang terdiri daripada tiga bangunan lima tingkat di atas lot tersebut. MPPJ telah meluluskan suatu pelan pembangunan yang dipinda yang membenarkan Sykt Kerjasama itu membina 48 unit. Plaintif adalah pemunya dan pemastautin di tiga buah rumah banglo di kawasan berhampiran lot tersebut yang inginkan lot tersebut dibiar lapang sebagai suatu kawasan rekreasi. Mereka telah memohon untuk suatu injunksi dan perintah certiorari untuk membatalkan keputusan MPPJ atas alasan bahawa rundingan tidak diadakan dengan pemastautin tanah yang bersempadanan sebelum keputusan itu dibuat, dan bergantung pada, antara lain, s 21(6) Akta Perancangan Bandar dan Desa 1976 ('Akta itu'). Plaintif menegaskan bahawa mereka mempunyai jangkaan sah untuk diberitahu tentang sebarang pembangunan dan diberi hak untuk membantah terhadapnya jika ia menjejaskan kepentingan mereka.

Diputuskan, menolak permohonan itu:

(1) Plaintif mempunyai jangkaan sah supaya diberitahu dan supaya bantahan mereka didengar dan memanglah jelas daripada duluan kehakiman bahawa pemunya tanah bersempadanan yang terjejas berhak memohon untuk certiorari dalam masa enam minggu dari tarikh keputusan itu. Akan tetapi, ini tidak bermakna bahawa mereka berhak menentukan keputusan MPPJ itu.

(2) Sesuatu pihak berkuasa tempatan mempunyai kewajipan di sisi common law untuk memberitahu dan mendengar bantahan daripada pemunya tanah bersempadanan supaya ia boleh dilihat sebagai bertindak dengan adil apabila membuat keputusannya. Amalan memberitahu pemunya tanah bersempadanan tentang permohonan perancangan, seperti yang ditetapkan oleh s 21(6) Akta itu, telah diikut sebelum tahun 1984 dan adalah tidak adil dan tidak konsisten dengan amalan pentadbiran baik untuk menyimpang daripadanya semata-matanya kerana peruntukan relevan Akta itu tidak berkuatkuasa pada 1 Disember 1978. Peruntukan tersebut, terutamanya ss 13(1) dan 21, yang memberi orang yang terjejas itu hak untuk membantah terhadap pelan tempatan dan pembangunan, masing-masing, hanya mengisytiharkan apa yang merupakan amalan pentadbiran baik.

(3) Bagaimanapun, kerugian serius tidak diakibatkan di dalam kes ini kerana meskipun terdapat ketinggalan untuk memberi notis rasmi, plaintif telah mendapat tahu tentang pelan itu dan bantahan mereka telah didengar. Untuk mendapatkan suatu perintah certiorari, plaintif mesti membuktikan bahawa MPPJ telah bertindak secara mala fide dan telah mempertimbangkan faktor yang ia tidak seharusnya mempertimbangkan, tetapi plaintif gagal berbuat demikian.

(4) Tidak terdapat suatu jangkaan sah bahawa seorang pemunya tanah bersempadanan tidak seharusnya dibenarkan membina di atas tanahnya semata-matanya kerana beliau telah membiarkan tanah itu lapang buat beberapa tahun. Lebih-lebih lagi, cadangan pembangunan Sykt Kerjasama itu sejajar dengan pelan susun atur rasmi yang telah diluluskan oleh pihak berkuasa perancangan terlebih dahulu. Oleh yang demikian, Sykt Kerjasama itu tidak seharusnya dihalang daripada membina di atas lot tersebut semata-matanya kerana ia memilih untuk membiarkannya lapang selama 20 tahun.

Obiter:

(1) Sebelum sesuatu hak di sisi undang-undang itu boleh dikuatkuasakan, ia mesti ditakrifkan dengan tepat oleh statut atau keputusan kehakiman. Sesuatu jangkaan semata-mata hanya boleh menjadi 'sah' apabila ia diiktirafkan oleh mahkamah sebagai suatu jangkaan yang munasabah, sama ada kerana ia menjadi amalan untuk menyifatkannya sebagai biasa atau mengikut adat ataupun kerana kelakuan khas seseorang individu yang berada di dalam kedudukan berkuasa yang tidak bertindak mengikut cara yang tidak konsisten dengan kuasanya.

(2) Locus standi adalah secara harfiah suatu tempat berdiri, iaitu suatu tempat berdiri di mahkamah atau suatu hak untuk menghadirkan diri di sebuah mahkamah keadilan atas suatu soalan tertentu. Hak itu diberikan kepada seorang jika beliau mendakwa untuk menguatkuasakan suatu hak peribadi ataupun hak awam di mana pelanggaran hak awam itu menyebabkan kerosakan langsung kepadanya. Seseorang mesti menentukan terlebih dahulu sama ada hak atau jangkaan sah itu timbul sebelum isu locus boleh ditimbulkan.]

Notes

For cases on the construction of the word 'locus standi', see *Malayan Law Journal Words and Phrases Judicially Defined* (1990) at pp 326–327.

For cases on the construction of the word 'legitimate expectation', see *Malayan Law Journal Words and Phrases Judicially Defined* (1990) at p 319.

For cases on certiorari, see 1 *Mallal's Digest* (4th Ed) paras 48–167; [1989] Mallal's Digest 1208, 1216–1220; [1990] Mallal's Digest

971; [1991] Mallal's Digest 19–26; [1992] Mallal's Digest 13–14; [1993] Mallal's Digest 7–9. A

Cases referred to

A-G of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629; [1983] 2 All ER 346; [1983] 2 WLR 735 (refd) B

Council of Civil Service Unions & Ors v Minister for the Civil Service [1984] 3 All ER 935; [1984] 1 WLR 1174 (refd)

Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors and another appeal [1992] 2 MLJ 393 (refd)

District Council Central, Province Wellesley v Yegappan [1966] 2 MLJ 177 (refd) C

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12 (refd)

Ipoh Town Council & Anor v Ng Khoon Khoon (No 2) [1960] MLJ 227 (refd)

Tok Jwee Kee v Tay Ah Hock & Sons Ltd and Town Council, Johore Bahru [1969] 1 MLJ 195 (refd) D

Legislation referred to

Emergency (Essential Powers) Ordinance No 46 of 1970 s 47
Federal Territory (Planning) Act 1982
Local Government Act 1976 ss 3, 166
Municipal Ordinance (Cap 133) E
Street, Drainage and Building Act 1974
Town and Country Planning Act 1976 ss 5, 21, Pt IV
Town Boards Enactment (FMS Cap 137) ss 135, 138, 140, Pt IX
Town Boards Enactment No 118 (Johore)
Planning (Development) Rules 1970 rr 5, 6 F
Uniform Building By-laws 1984
Rural Board, Province Wellesley Building By-laws 1950
Town Board By-laws 1937

Kamilah bte Kasim (*Shahinuddin & Ranjit*) for the plaintiffs/applicants.
SK Ong (*Lee Ong & Kandiah*) for the first defendant/respondent. G

Mahadev Shankar J: The second defendant is also known as the Federation of Malaya Government Officers Co-operative Housing Society Ltd ('the Co-op'). It owns land in what is now known as SS1 in the Municipality of Petaling Jaya. The land area is 1.307 acres and is comprised H in Lot 1916, Mukim Damansara, District Petaling ('the said land'). The Co-op originally wished to erect 40 units of luxury apartments in two blocks of five storeys each and 20 units of semi-luxury apartments in one block also of five storeys upon the said land.

The plaintiffs are owners and residents in three bungalows in the immediate vicinity of the said land. The third plaintiff is the president of I the Kampong Jamil Rais Owners'/Residents' Association ('the Association'). They want the said land to remain vacant as a recreational area.

The Majlis Perbandaran Petaling Jaya ('the MPPJ') is caught in the middle. On 7 December 1992, the MPPJ gave its approval ('the said

A approval') to an amended building plan permitting the Co-op to put up 48 units on the said land.

The Association came to this court to prevent those buildings from going ahead. On the day of the hearing, its counsel abandoned the prayer for an injunction and concentrated her efforts in persuading this court to B grant an order of certiorari to quash the said approval. Two grounds were urged. First, it was said that since the Association's objections had not been heard before the said approval was granted, there was a failure of natural justice. Secondly, it was urged that the Association had a legitimate expectation that it would be consulted and that in all the circumstances of the case, the said approval should not have been granted at all.

C In the early '60s the SS1 area was known as Diana Estate. Its nucleus was Sungei Way New Village. It came within the administrative area of the Sungei Way Town Board ('SWTB'). It was outside the area of the Petaling Jaya Town Board ('PJTB'), in the domain of the District Office Klang and was comprised in the title Grant 7133.

D The nominal predecessor of the Co-op at that time was the Malaysia Government Services Welfare and Recreational Council. With the help of a private developer called Euco Development Ltd, the Council put up a brochure entitled 'Housing scheme for government officers'. The brochure contained a layout plan for the proposed sub-division of Grant 7133 into E 183 bungalow lots. The said land was more or less in the centre. It was designated 'Proposed two blocks 11-storey flats with shops under'. (This layout plan is hereafter referred to as the 'Co-op's layout plan'.) Adjoining it was a slightly smaller portion designated as a 'padang'.

The Council aforesaid was reconstituted as The Federation of Malay F Government Officers Co-operative Housing Society Ltd. This Co-op applied for sub-divided titles in accordance with the Co-op layout plan. It then sold these bungalow lots to its members. The said land it retained for itself.

The Co-op's qualified title ('QT') for the said land was issued on 10 June 1968. In the QT, the said land was referred to as Lot 1916. It is G important to note that the category of land use specified in the title was clearly stated as 'building'. The express conditions of the title stated:

> The land herein described shall be used for the purpose of a housing scheme and other purposes in conformity with the said scheme and shall not be used for any other purpose without the consent of the Ruler in Council. The H said housing scheme shall be approved by the District Officer, Klang upon agreement with the layout plan having been prepared by the State Planning Officer, Selangor.

The QT was superseded by Grant 35572 issued on 6 December 1991. The special conditions remained the same. We are not concerned with the adjoining lot designated 'padang' in the Co-op layout plan. This 'padang' I was also issued with a qualified title under Lot 1915 and remains a 'padang' to this day.

Although this housing scheme was approved by the District Officer Klang, it came under the administrative area of the SWTB. It is apparent that the Co-op named it Kampong Jamil Rais when the scheme got going.

It is also apparent that even though it was empowered to prepare a general town plan by s 135 of the Town Boards Enactment (FMS Cap 137) ('the Town Boards Enactment'), the SWTB did not do so. A

The PJTB however did prepare a general town plan but in respect of the PJ town area only. By Selangor Government Gazette No 520 dated 1 October 1973, it invited objections, if any, to this town plan as provided for by s 138 of the Town Boards Enactment. B

As from 1 January 1977, however, the town board area of SWTB and PJTB were merged and brought under the single jurisdiction of the MPPJ. This was done by the state authority of Selangor in the exercise of the powers conferred by s 3 of the Local Government Act 1976, in consultation with the Minister of Local Government. The PJTB was thereafter known as the Petaling Jaya Municipal Council ('MPPJ'). The previous SWTB and PJTB areas were now to be known as the local authority area of the MPPJ. C

The said land (Lot 1916) thus passed into the MPPJ's jurisdiction, without a general town plan for Kampong Jamil Rais. The MPPJ therefore proceeded to let it be developed subject to such restrictions as were already in force. D

It could have been around this time that Kampong Jamil Rais also came to be known as SS1. The said land was bounded by the roads SS1/4 to the south and SS1/5 to the west. Its eastern boundary was Lot 1915, the 'padang' aforesaid. The bungalow lots, 1924 and 1917, adjoined its northern boundary. I am prepared to assume for the purposes of this judgment that the bungalow lots in the vicinity were all occupied by 1977 though not necessarily by the three plaintiffs. E

What this means is that up till 1984, Lots 1916 and 1915 was vacant land, enjoyed as such by the neighbouring landowners. Sometime in 1984, the Co-op submitted a proposal to the MPPJ for 40 units of luxury apartments in two blocks of 5-storeys and 20 units of semi-luxury apartments in one block of 5-storeys on the said land. F

When this happened, the MPPJ had first to satisfy itself that this proposed development was in line with the layout plan approved by the planning authorities. The evidence shows that the copy layout plan supplied to the MPPJ by the District Officer, Klang and produced in court is identical to the Co-op layout plan, because the lot sizes, numbers and road reserves shown are the same in every respect with the one very minor variation that the Klang District Office layout refers to the said land, Lot 1916, as designated for flats whereas this Co-op layout had the more detailed specification 'Proposed two blocks 11-storey flats with shops under'. The Co-op's proposal was therefore in line with the official layout plan. G H

On 16 February 1985, the MPPJ notified the Co-op's architect that it had approved the Co-op's proposal and that the building plans could therefore be submitted for further approval. I

Whilst this was in process, the Co-op's contractor, Euco Teknik Construction, began to clear the said land. The third plaintiff and other

members of the Association's committee then wrote a protest letter on 30 September 1985, claiming that the said land 'was detailed in the approved plan as a green zone area'. They approached the state assemblyman, YB Mazlan Dato' Harun, who wrote a letter dated 4 October 1985 setting out the Association's objections. This letter acknowledged that Lot 1916 was designated for flats 15 years earlier but claimed that this was no longer appropriate. At its meeting on 18 November 1985, the MPPJ took these views into consideration and decided to obtain further clarification. The MPPJ nominated its member, Tuan Hj Ibrahim bin Abdul Rahman, to do this and deferred its decision.

On 8 December 1985, the Association president, Mr SK Kulasingam, wrote a protest letter to the Menteri Besar. Again, the basis of this protest was that the said land was a green lung for the residents and the proposed development would overstrain the available resources. Copies of this letter were circulated to many VIPs. Mr Kulasingam also invited the attention of the media. A press report appeared in *The Star* on 20 December 1985. From January to April 1986, the Association maintained its pressure by publicizing its objections in further articles in the press which appeared in *The Malay Mail* on 27 January 1985, 3 April 1986 and 21 April 1986.

In the meanwhile, it would appear from the minutes of the MPPJ for 16 January 1986 that Tuan Hj Ibrahim had obtained the views of both the Co-op at a general meeting and the local UMNO branch that they had no objections. YB Mazlan Harun attended this meeting and aired his views. The MPPJ then decided to meet the Co-op to discuss a reduction in height and density of the proposed development.

This meeting took place on 29 January 1986. The MPPJ subsequently passed the Co-op's plans on 17 March 1986 but with a significant amendment. The height of the block was reduced to four storeys and the number of units from 60 to 48. The Co-op appealed. This appeal was rejected on 24 September 1986.

From a letter dated 19 March 1986 and written by the Association secretary to the president of the MPPJ, it appears that a meeting did take place between the MPPJ president and the Association committee before the plans were passed on 19 March 1986. In it she said:

> As indicated in our discussion we have no objections to the construction of single type bungalows, semi-detached houses or even two-storey link houses. The number of units is vital as it will affect the existing limited amenities within the said area, eg width of adjoining roads, water supply, etc.

The significance of this is that the Association was no longer insisting that the said land be maintained as vacant ground.

Meanwhile the Association campaign continued, with pickets by Association members in late March 1987 which was publicized in *The Malay Mail* of 30 March 1987 and a very comprehensive letter from the Association's lawyers dated 23 April 1987 threatening legal action which did not follow.

There is some evidence to suggest that the Co-op's architects and engineers were still discussing details as to roads and drains required in

July 1987. (See MPPJ letter d/19/7/87.) But the Co-op did not follow up on either and the proposal went into limbo until 1990. A

At the Co-op's AGM on 28 October 1990, the issue of the proposed development of the said land was resurrected by a majority of members. Only one member, a Mr Ratnasingam, objected to its implementation. According to the minutes, however, out of 3,409 members, less than 1,000 had houses. The remaining 2,409 members had no houses of their own and wanted the project to proceed. Accordingly, the Co-op did so because it was also in danger of being sued for damages by its building contractor. B

I would pause here and once again draw the lines between the combatants. On the one side, behind the Co-op, was a majority of their members who were demanding accommodation to be made available on Lot 1916 which was their own land and on the other side was the Association. It is not irrelevant to state that the first plaintiff, Freddie Lee, came into the picture only when he bought Lot 1924 in the year 1992. Liew Chee Kong bought Lot 1917 in 1988. It is not in evidence when Mr SK Lingam bought his lot. It is unlikely that these three persons are members of the Co-op because their names do not appear in the list of members who attended the 17th AGM of the Co-op on 27 September 1992. The Co-op layout plan shows only 183 individual bungalow owners in the immediate vicinity who could be interested in the outcome. Mr SK Singam claims that the Association represents 2,500 members who will be adversely affected. The discrepancy in the numbers raises some questions of credibility which need not delay us here. Suffice to say that the Association claims to represent the interests of the neighbouring residents and landowners. C D E

On 5 February 1991, the Co-op submitted fresh plans but let it be noted that these plans were in line with the MPPJ's approval of 17 March 1986, ie it was for the same 48 units. The residents got to know of it and resumed their protests. They invited the attention of the media and *The Malay Mail* dated 29 August 1991 contains press statements made by both parties. F

On 28 August 1991, there was a meeting between the MPPJ president, some of his councillors and staff on the one side, and a large group of residents including the second and third plaintiffs. Two minute papers have been put in evidence of this meeting. G

The Association secretary's minutes are a lengthy record of the speeches made by Mr Singam and a Mr Mohan, as the president and secretary of the Association. They list in detail its objections to the development. The purpose of the exercise was to preserve the said land as a green lung. The second minutes of this meeting are the official minutes kept by the MPPJ public relations officer. It records that Mr Singam wishes to preserve the said land as a recreational area (para 2.2). Paragraph 3 of these minutes should be set out verbatim. It reads: H I

> Keputusan
>
> 3.1 Tuan Pengerusi bersetuju untuk mengkaji semula isu yang dibangkitkan ini. Perbincangan di antara pegawai kanan MPPJ perlu diadakan sebelum sebarang keputusan diambil.

A The plaintiffs contend that this means the MPPJ president thereby undertook to discuss the matter further with the plaintiffs before a decision was reached. I agree with Mr CK Ong that the proper meaning is that a discussion would be held amongst the senior officers of the MPPJ only. The Association's minutes makes no reference to any undertaking whatsoever.

B

That further conditions were imposed by the MPPJ on the Co-op is evident by a letter dated 22 July 1992 from the Co-op to the MPPJ which refers to the requirements of a surau, and road widening of SS1/5 and SS1/4 which must have required setting aside part of Lot 1916 for this purpose.

C

On 7 December 1992, the MPPJ finally gave its approval with conditions. The 'record' of this approval is an official letter dated 19 January 1993 (encl 8, exh GTH5). It requires 30% of the development to be set aside for bumiputeras, compliance with recreational infrastructure, beautification and landscaping to be carried out in accordance with the D MPPJ conditions, and water and electricity connection before the CF would be issued.

This is the decision the plaintiffs impugn. They say the official minutes, para 3.1 aforesaid, were an undertaking by the MPPJ that no plans would be approved until the Association had been consulted again. E They say they were surprised when they found clearing works being carried out on the said land in May 1993. And they say that they only came to know that official approval had been given when they saw an article in *The Malay Mail* of 15 May 1993 wherein the Co-op president revealed that approval had been given. A very strongly worded protest letter by the solicitor of the Association was served on the MPPJ president on 19 May F 1993 alleging infringement of their legal rights. These proceedings followed initially for an application for leave which was granted, followed by the motion proper for an injunction and certiorari. Final submissions were concluded on 19 January 1994.

Initially, the plaintiffs appear to have thought that they had an G entrenched right to object to the Co-op's building plans by virtue of s 21(6) of the Town and Country Planning Act 1976. It reads:

> If the proposed development is located in an area in respect of which no development plan exists for the time being, then, upon receipt of an application for planning permission, or, where directions have been given under subsection (3), upon compliance with the directions, the local planning H authority shall, by notice in writing served on them, inform the owners of the lands adjoining the land to which the application relates of their right to object to the application and to state their grounds of objection within twenty-one days of the date of service of the notice.

This section is contained in Pt IV of the Town and Country Planning Act I 1976. Section 1(2) and (3) of the Act, however, provided that different provisions of the Act may come into force in such different local authority areas on such different dates as the state authority may appoint. Only Pts 1 and 2 of the Town and Country Planning Act 1976 were brought into force in the whole of the State of Selangor on 1 December 1978 by Selangor PU 21/78, and Pt 3 on 1 January 1984. Section 21(6) of the

Town and Country Planning Act 1976 was therefore of no direct assistance to the plaintiffs. This may be why they abandoned their claim for an injunction, and concentrated their fire on obtaining a certiorari.

Nor was the case of *Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors and another appeal* [1992] 2 MLJ 393 of any direct help to them because they could not show any parallel legislation in Petaling Jaya comparable to rr 5 and 6 of the Planning (Development) Rules 1970 made by the Federal Capital Planning Authority under the powers conferred under s 47 of the Emergency (Essential Powers) Ordinance No 46 of 1970.

So the plaintiffs fell back on the Town Boards Enactment. This Enactment has been whittled away by subsequent legislation.

The first of the repealing Acts in point of time (but not in terms of enforcement) was the Street, Drainage and Building Act 1974. Section 134 of this Act listed for repeal:

(i) a portion of Part VI (Obstructions and Nuisances) covering sections 67 to 78 (leaving sections 79–88 intact) and

(ii) Part VII (Streets and Buildings) and Part VIII (Town Improvement) covering section 89 to 134A in its entirety.

The State Authority by Gazette PU (B) 279/78 brought this Act into force in Selangor only on 1 June 1978.

The Local Government Act 1976 by s 166 listed for repeal the whole of the Town Boards Enactment except those sections already listed for repeal by the Street, Drainage and Building Act 1974 aforesaid and except Pt IX of the Town Boards Enactment relating to town planning alone. This 1976 Act was brought into force in the State of Selangor on 1 January 1977 by Selangor Gazette PU 8/77.

The net effect was that as from 1 June 1978, the Town Boards Enactment effectively disappeared from the statute books with the exception of Pt IX relating to town planning. From that date, the governance of the submission of building plans fell to be decided by the Street, Drainage and Building Act 1974. The subsidiary legislation under this Act enacted under powers conferred by s 133 was the Uniform Building By-laws 1984 (Federal Government Gazette 5178 dated 12 September 1985).

In her opening submission, counsel for the plaintiffs submitted that because the MPPJ had not prepared a general town plan for the area first known as Kampong Jamil Rais, and then known as SS1, it had deprived the applicants of its right of objection under s 138 of the Town Boards Enactment. With respect, this submission flies in the face of history.

Prior to 1 January 1977, the PJTB had no responsibility whatsoever for Kampong Jamil Rais because this land lay outside its local authority area.

Section 135 of the Town Boards Enactment in my view imposed no duty upon the SWTB to prepare a general town plan for an area which was then a village in a rubber estate. The implementation of the provisions of ss 137 and 138 of the Town Boards Enactment therefore did not arise at that time.

A The title to Lot 1916 was issued to the Co-op on 10 June 1968. If any document can be considered a proposed town plan for Kampong Jamil Rais as such, it was the layout plan submitted by the Co-op to the state authority so that sub-divided titles could be issued in accordance with the wishes of the Co-op and its members. The town planning aspects of B Kampong Jamil Rais had become a fait accompli when that sub-division went through. The state authority agreed with the proposal as it was empowered to do so by s 140 of the Town Boards Enactment and designated the category of use, and the special conditions imposed upon these sub-divided titles. Lot 1916 from its inception was building land. Once done even the State Authority could not alter this to the detriment of the Co-op C except in accordance with law.

The plans first submitted by the Co-op in 1984 to put up multi-storey apartments were building plans for Lot 1916 alone. They cannot be described as a general town plan for the area. Accordingly, they fell to be considered by the MPPJ in accordance with the Street, Drainage and D Building Act 1974.

The Street, Drainage and Building Act 1974 or the Uniform Building By-laws 1984 do not impose any specific statutory duty on the MPPJ to give the adjoining owners any advance notification that building plans have been submitted for any particular lot or most importantly to give the E adjoining owners any opportunity whatsoever to object to any proposed development. Counsel for the MPPJ was very emphatic on this point. He, therefore, contended that the plaintiffs had no locus standi. He relied on *District Council Central, Province Wellesley v Yegappan* [1966] 2 MLJ 177 and *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12.

F Counsel for the plaintiffs contended that in all the circumstances of this case, the plaintiffs had a legitimate expectation to be notified of any development and given the right to object to it if it adversely affected their interests. She relied on *A-G of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629; [1983] 2 All ER 346; [1983] 2 WLR 735 and *Council of Civil Service* G *Unions & Ors v Minister for the Civil Service* [1984] 3 All ER 935; [1984] 1 WLR 1174.

These terms 'locus standi' and 'legitimate expectation' as legal concepts are somewhat lacking in precision. What can be said with confidence is that they are not horses of the same colour, even though the H colours of one may to some extent merge with and perhaps even overlap the other. Thus, a legitimate expectation could be merely an expectation to be notified, or to be notified of an opportunity to participate in the decision-making process, or perhaps even an opportunity to appeal against an unfavourable decision. To be enforceable, legal rights have to be I precisely defined by statute or judicial decision. A mere expectation can only become 'legitimate' when it is recognized by a court of law, to be a reasonable expectation, because the practice was such as to be generally regarded as usual or customary or in a particular case because of some special conduct of an individual in a position of authority who was not thereby acting in a manner inconsistent with his authority.

'Locus standi' on the other hand is literally a place of standing. In the legal arena, it has become a place to stand in court, or a right to appear in a court of justice on a given question. That right is given to a person if he is suing to enforce some private right or even some public right provided the interference with that public right causes direct damage to him. To avoid a situation of asking which came first, the chicken or the egg, one has to determine first whether the right or legitimate expectation arises. A denial of locus standi will only follow where such existence is first negatived.

Thus, it is important to note that in the case aforesaid, Yegappan, as an adjoining owner, was invited to attend the meeting of the municipal council to voice his objections to the development plan submitted by the adjoining landowner. The decision was not concerned with the issue of Mr Yegappan's right to be heard. His complaint was that the development plan did not conform in its entirety with certain sections of the Rural Board, Province Wellesley Building By-laws 1950 and the Municipal Ordinance (Cap 133). The relevant passage in the judgment is at p 182, where Abdul Aziz J said:

> With deference to the learned judge I think the objector's complaints must be examined objectively. Certiorari is not available for vindicating mental or sentimental injury. The fact that his neighbour's backyard will face his (the objector's) front lawn or his sitting room will naturally be a matter of interest or, to put it a bit higher, a matter of grave concern to him. But that does not give him a legal right to object. He will have legal right to object and, therefore, locus standi if the adjoining buildings are going to be put up in contravention of the law and the breach by its nature and materially affect his legal right. *The existence or otherwise of this element called legal right depends upon the facts of each case and the burden is on the objector to show that his proprietory rights have been injured.* (Emphasis added.)

So nit-picking objections, even if technically correct, will not confer locus standi in an application for certiorari.

The first issue here was whether the plaintiffs had a legitimate expectation to be notified of the submission of the plans by their neighbour.

One has to keep pace with the times here. In 1966, the worst apprehension of a long-standing resident to his neighbour's new house may well have been that his sitting room or front lawn may now face his neighbour's backyard. Today, it is common place for developers, preparatory to constructing a multi-storey block in a residential locality, to make deep excavations which could work havoc with the surrounding water table and foundations, carry out piling operations round the clock with an intensity that would not only ruin the sleep of their neighbours but crack up the floors and walls of the nearby houses, which were simply not designed to resist such pressure.

Where there is an existing town plan, the position under Pt IX of the Town Boards Enactment was quite straightforward. By s 145 of the Town Boards Enactment (to quote the words of Thomson CJ in *Ipoh Town Council & Anor v Ng Khoon Khoon (No 2)* [1960] MLJ 227 at p 229), 'the town council shall refuse to approve the plan of any new building unless such plan is in conformity with the approved plan'.

In December 1957, the landowner there had obtained approval to build a night-club called Olympic Inn in an area designated 'open development' in the town plan. The adjoining owner only came to know this in February 1959. The judgment did not deal with the question of whether the adjoining owner had a right to be notified. It dealt with his right to come to court for an order of prohibition.

Tok Jwee Kee v Tay Ah Hock & Sons Ltd and Town Council, Johore Bahru [1969] 1 MLJ 195 is another case. After the plans for a block of four three-storey buildings were approved, the adjoining owner objected unsuccessfully and then came to court for a declaration that the land was within the residential zone and the approval was contrary to the provisions of the Johore Town Boards Enactment No 118 and the Town Board By-laws 1937. The point whether the adjoining owner had a right to be notified of the application for the approval was not argued. Suffian FJ (citing Thomson CJ with approval) said this at pp 201–202:

> In my judgment the duty imposed on the Johore Bahru Town Council by s 145 is owed not only to the public generally but to a broad class — a particular definable class of the public of which the plaintiff is one. When the council zones an area for residential purposes, the zone benefits not only the inhabitants of the town generally, it benefits in particular the inhabitants of the zone. Persons buying land in the zone are prepared to pay an increased price because of the promise of peace and quiet and the attractions of living in a residential zone.
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> ...
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> Holding the council liable for damages for any injury caused to the owner of an adjoining lot for breach of its statutory duty under s 145, is not necessarily unjust to the council. Any plan approved under s 140 for zoning an area for residential purposes, does not tie the council's hands forever. If, owing to change of circumstances, it is desired to allow a non-residential building to be built in a residential area, it would be open to the council to propose under s 144 an amendment to the approved plan. In that event the council will give notice of its intended amendment, invite and consider objections and persons in the position of the plaintiff will then have an opportunity to object to the proposed amendment. Only after objections have been considered may His Highness the Sultan in Council approve the proposed amendment. These provisions also demonstrate, in my view, that the zoning provisions in the Town Boards Enactment are for the special benefit of persons living or owning lands in zoned areas.

It is possible to extract a principle from these dicta that where a town board is proposing to allow a development which is not in keeping with the purposes for which that area was designated it must inform the adjoining owners, and hear their objections.

Yegappan's case [1966] 2 MLJ 177 shows that the municipality recognized the need to inform even though it is not clear from the report whether there was statutory duty to do so. In *Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors & Anor* [1992] 2 MLJ 393, it is noteworthy that even though it was submitted that there was no longer any statutory duty to inform the adjoining landowners after the Federal Territory (Planning) Act 1982 came into force, the fact is that the Datuk Bandar did send the notice but unfortunately to the wrong address.

I am unable to say if there was some subsidiary legislation prior to the coming into force of the Street, Drainage and Building Act 1974, which obliged the local authority to give notice of the proposed development to adjoining landowners. I do hold, however, that there is sufficient material before me to show that, regardless of such legislation, there was a duty at common law both to give such notice to and hear objections from adjoining owners because nothing less would do if the local authority is to be held to have acted fairly towards the adjoining owners in carrying out their decision-making process on whether building plans are to be approved and if so with what restrictions.

In this context, I would further hold that the omission to bring Pt IV of the Town and Country Planning Act 1976 into force in Selangor on 1 December 1978 is not to be construed as meaning that the local authority no longer had an obligation to take the action required by s 21(6) of this Act. The practice set out by s 21(6) was followed prior to 1984 and it would be unfair and inconsistent with good administration for the local authority to depart from the practice merely because the relevant provisions of the Town and Country Planning Act 1976 (especially s 21(6) in the present context) had not yet been brought into force. These provisions, and especially s 13(1), giving affected persons the right to object to local plans and by s 21 to object to development plans, are merely declaratory of what would be regarded as good administration practice.

I have said earlier that Pt IX of the Town Boards Enactment relates only to town planning and not to building plans as such. It is very difficult to understand why only Pts 1, 2 and 3 of the Town and Country Planning Act 1976 has been brought into force in Selangor because when this Act was passed, Pt IX of the Town Boards Enactment had outlived its purpose. Let it be noted that under s 5 of the Town and Country Planning Act 1976, the local authority is also the local planning authority and under s 21, 'development' and 'planning permission' now covers buildings and not just zoning. In other words, the clear distinction between 'building plans' and 'town plans' which had to be made when construing Pts VII and IX of the Town Boards Enactment for this kind of exercise has disappeared.

There is another aspect to the issue of fairness. It is abundantly clear from judicial precedent that adjoining owners who are adversely affected have a right to come to court to request leave to apply for certiorari if the circumstances so warrant. Under our law, such applications must be made within six weeks from the date of the decision, not six weeks from the date on which the applicant gets to know about it. To enable the applicant to apply in good time, he has to be promptly notified of the decision. The effectiveness of this judicial remedy will be considerably diluted if the planning approval is a secret between the local authority and the developer, and the aggrieved adjoining owner is only to hear of it when the developer's heavy machinery is at his doorstep. No doubt the court can extend time as was done in this case but by the time the final order is obtained, the damage may have crystallized.

A Consequently, I hold that the plaintiffs did have a legitimate expectation to be notified and have their objections heard. No serious damage was done in this case because despite the omission to give formal notice, the plaintiffs got to know of the plans both on its first submission and again on the second submission and their objections were heard on both occasions.

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This bring me to the second stage of this exercise. Giving a person an opportunity of being heard is one thing. Saying that he is thereby entitled to dictate to the MPPJ how it should decide is quite another.

This court is concerned to see that the MPPJ's decision in approving the plans on 7 December 1992 was done fairly after due and fair regard to all the conflicting interests.

C

By the time the matter got to the MPPJ president the second time on 28 August 1991, the thrust of the plaintiffs' attack was that Lot 1916 should be kept as vacant ground by way of a green lung. The legitimacy of this demand can be tested by putting things another way. Merely because the Co-op chose to leave the said land vacant for 20 years, should the MPPJ and this court prevent the Co-op and its houseless members from building on it at all? After all, they were acting in accordance with the law and using their land for the very purpose for which it was alienated to them. Or should the plaintiffs and their active supporters count themselves lucky that they were allowed to enjoy the use of this land free for all these years? The quit rent on Lot 1916 was RM472.10 from 1968. It was increased to RM1,025 on 6 December 1991. In addition, the Co-op would have paid assessment to the PJTB and the MPPJ year after year. Where is the legitimacy of an expectation that an adjoining landowner should not be allowed to build at all on his land merely because he has left it vacant for a number of years?

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I entirely agree with Mr CK Ong of counsel that to obtain certiorari, the plaintiffs must prove that the MPPJ acted mala fide, and took factors into consideration which it ought not have done. The plaintiffs have totally failed to do this. The application is dismissed.

G One last observation must be made. When the submissions were concluded on 19 January 1994, I was informed that the buildings were already up to the third floor with one more floor to go. Admittedly there has been some delay in delivering this judgment but by way of mitigation, I hope it can be seen that the facts here have a long history and the applicable law is not quite as simple as one would wish.

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I will now hear the parties on the proper orders to be made on costs.

Application dismissed.

Reported by Anne Khoo

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